

## **Section B-2**

### **Employment Support**

The contents of this Toolkit have been developed to assist you in your efforts to support family readiness. Every effort has been made to ensure that the information provided is current and accurate. However, because statutory and regulatory changes may have occurred since the publication of this Toolkit, the Office of the Assistant Secretary of Defense for Reserve Affairs cannot assume responsibility for its continued accuracy. Before taking any significant action based on the contents of this Toolkit, you should contact your Family Readiness Program representative or legal officer, as appropriate, to secure the most current information.

**Questions And Answers For  
Employers And Their Employees  
Who Participate In The National  
Guard And Reserve**

## Employer Support

### **Questions and Answers for Employers and Employees who participate in the National Guard and Reserve**

The [Uniformed Services Employment and Reemployment Rights Act \(USERRA\)](#), enacted October 1994 and significantly updated October 1996 and 1998, provides civilian employment protection and rights to employees who participate in the National Guard and Reserve.

**Important Note.** Through the National Committee for Employer Support of the Guard and Reserve (ESGR), the Department of Defense (DoD) works hard to obtain and sustain employer and community support for National Guard and Reserve members who periodically are absent from their civilian jobs to perform military duty. After reading the following, if you still have a question about employment rights, the experts – DoD, the U.S. Department of Labor Veterans' Employment and Training Service (VETS), and ESGR – suggest you start by contacting ESGR. This is not only your best option for speedy resolution; it protects all your levels of appeal if they are needed.

You can contact ESGR Ombudsmen Services through your [local ESGR Committee](#) or the [National ESGR Headquarters](#), or use our toll-free number, **(800) 336-4590 – ask for Ombudsmen Services**. ESGR Ombudsmen are qualified to help, sympathetic to the needs of both the employers and employees, and committed to remaining impartial in their counsel. They provide informal mediation services in conjunction with the Veterans' Employment and Training Service (VETS), U.S. Department of Labor. Volunteer members are trained by ESGR and VETS to provide assistance to employers and employees in the resolution of employment conflicts that can result from military membership, training, or other service requirements protected under USERRA. The information provided below should not be considered legal authority, but is provided as general information about USERRA.

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#### **USERRA Facts, Questions and Answers for Employees**

##### **1. Is an employee protected from unlawful discrimination by an employer due to military affiliation?**

Yes. USERRA provides protections for initial hiring and adverse employment actions by an employer if the actions relate, even in part, to the employee's military service. This protection also extends to potential witnesses of a discriminatory action on the part of the employer.

##### **2. What are the basic eligibility requirements for job protection under USERRA?**

To be protected, a National Guard or Reserve member must have a civilian job, must provide timely notification to the employer of military duty, and must report back to work for reemployment in a timely manner. Reemployment rights are provided even if the civilian job is described as "temporary," unless the employment was for a brief period with no reasonable expectation of continuance for a significant period of time.

**3. Is there a limit to the amount of active duty an employee can perform and still have reemployment rights?**

Yes, there is a 5-year cumulative total of military service an employer is required to support. Not included in that total are: involuntary recalls to active duty, drills (inactive duty training), annual training, and additional training requirements determined and certified in writing by the Service Secretary concerned to be necessary for professional development or for completion of skill training or retraining.

**4. Does USERRA apply to "state" military duty or governor call-ups of National Guard members?**

No. However, protection for such duty is generally provided by state statutes and in most instances is comparable to protections provided under USERRA.

**5. When should an employee provide notification of upcoming duty?**

Written or oral notification must be made to employers prior to going on duty, unless precluded by military necessity. Employees are highly encouraged to notify their employer of any "window" of anticipated military activity, when application for orders is made, or if notified of possible involuntary recall. Employees are also strongly encouraged to provide their employers notice of upcoming military service at least 30 days in advance when possible. Employees should be sensitive to employer scheduling requirements when providing notification and when submitting application to the unit commander for orders. Where possible, an employee should submit requests for orders during calendar periods outside of peak business seasons and not during the most popular vacation cycles.

**6. Does an employee have reinstatement rights following voluntary military service?**

Yes. There is no differentiation between voluntary and involuntary orders under USERRA, so long as the basic eligibility requirements are met.

**7. What if an employee does not return in a timely manner to work?**

The employee is subject to the personnel policies and practices of the employer for unexcused absences.

**8. How does military service affect employee status or seniority in the workplace?**

An employee must be considered not to have been absent from the workplace if the only reason for that absence was service in a uniformed service. A returning employee must be made "whole" by:

- being allowed to contribute to the pension plan any amount that would have been contributed had the employee not been absent.
- being reinstated with privileges and status the employee earned by length of service (for example, after 3 years with a company an employee may be entitled to accrue more vacation per year, or after 5 years an employee is automatically advanced to a management position).

**9. What are the rules on contribution to the pension or thrift savings plan for periods of military leave of absence?**

Upon reemployment, the employee has 3 times the length of service (not to exceed 5 years) to make payments and the employer is liable to fund any resulting obligation of the plan within the same time frame.

**10. Can an employee contribute to the pension plan when on military leave of absence?**

There is no burden under the law for an employer to continue pension contributions while the employee is away from the work site. An employer may choose to offer this benefit.

**11. What are the rules for entitlement to health insurance?**

For absences of less than 30 days, benefits continue as if the employee has not been absent. If a person's health plan coverage would terminate because of an absence due to military service, the person may elect to continue the health plan coverage for up to 18 months after the absence begins or for the period of service (plus the time allowed to apply for reemployment), whichever period is shorter. Health insurance must be reinstated the day an employee is reinstated with no waiting period.

**12. Does an employee accrue vacation or medical/sick days from the employer while on military leave of absence?**

No. However, as in a previous question, an employer may choose to offer accrual of vacation or medical/sick days as an additional benefit. An employer is not required under USERRA to provide any paid benefit when an employee is not working at the worksite.

**13. Does an employee have the right to make up periods of work missed due to drill or military leave of absence?**

No. An employer may choose to offer an employee the opportunity to work hours missed as a benefit not provided under USERRA. For example, an employer is not required to provide hours of work for an average 2-week, 80-hour period if part of that period is missed due to military service.

**14. After completion of weekend drill, what is the time limit for an employee to return to work?**

The beginning of the next regularly scheduled work day that would fall eight hours after the end of drill and a reasonable amount of time to commute home. For example, an employer cannot require a service member who returns home at 10 p.m. to report to work 2.5 hours later at 12:30 a.m. However, the employer can require the employee to report for the 6 a.m. shift, or scheduled work period, the next morning (after reasonable commute from military duty to home followed by 8-hours). Included in the 8 hour period is time for rest and the commute to work.

**15. What is the time limit for an employee to return to work after Annual Training or other types of extended military leave of absence?**

Time limits for returning to work depend on the duration of the orders. The rules are:

Service of 1 to 30 days: the beginning of the first regularly scheduled work day that would fall eight hours after the end of the military duty, plus reasonable commuting time from the military duty station to home.

Service of 31 to 180 days: application for reinstatement must be submitted not later than 14 days after completion of military duty.

Service of 181 or more days: application for reinstatement must be submitted not later than 90 days after completion of military duty.

**16. What if the employee has an accident, is delayed by lack of military transportation, or is otherwise unable to report back in a timely manner?**

The employee must report back to work as soon as possible. If the reason for the employee's delay is not related to military duties, the employee is subject to the personnel policies and practices the employer would normally apply to employees with unexcused absences.

**17. What if an employee is injured or incurs a disability during military duty?**

The deadline for reinstatement may be extended for up to 2 years for persons who are convalescing due to a disability incurred or aggravated during military service, and employers must make reasonable accommodations for the impairment.

**18. What job position is an employee returned to after military leave of absence?**

Except with respect to persons whose disability occurred in or was aggravated by military service, the position into which an employee is reinstated is determined by priority, based on the length of military service. The rules are: Service of 1 to 90 days: (a) in the job the person would have held had he or she remained continuously employed (possibly a promoted position), so long as the person is qualified for the job or can become qualified after reasonable efforts by the employer, or (b), if the person cannot become qualified, in the position the person was employed on the date of the commencement of the military service. Service of 91 or more days: (a) same as for service of 1 to 90 days, or a position of like seniority, status and pay, so long as he or she is qualified, or (b) if the person cannot become qualified, in the position the person was employed on the date of the commencement of the military service or which nearly approximates that position.

**Note:** The reemployment position with the highest priority reflects the "escalator" principle, which requires that a returning service member steps back onto the seniority escalator at the point the person would have occupied if the person had remained continuously employed.

**19. Where do I go for information or assistance?**

Even with the best of communication and partnership between employers and their employees that are members of the National Guard or Reserve, questions and concerns do

arise related to the adverse consequences of military service. How should you handle them?

For members of the National Guard or Reserve, your first approach should be to go to your employer. Most often, a calm, objective discussion can lead to an acceptable solution if it is conducted in an atmosphere of mutual respect and cooperation.

If you can't come up with a workable solution, go to your unit commander for advice and support. Even with their focus on mission accomplishment, commanders have a vested, long-term interest in their people. It's best for the unit to resolve your problem. They may be able to better explain the situation to you and your employer. A lot of times, they can suggest compromises or alternatives that will satisfy everyone's needs.

If these attempts don't succeed, please read the following carefully:

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